

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

HECTOR DELEON,

Plaintiff,

v.

PHH MORTGAGE CORPORATION,

Defendant.

§
§
§
§
§
§
§
§
§

CASE NO. 5:19-cv-1342

NOTICE OF REMOVAL

Defendant PHH Mortgage Corporation (“PHH”) files this Notice of Removal pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.

BACKGROUND

On November 1, 2019, Hector Deleon (“Plaintiff”) filed an Original Petition against PHH in the 407th District Court of Bexar County, Texas (the “Action”).¹ Plaintiff asserts claims for fraud and seeks a temporary injunction enjoining PHH from foreclosing on the property located at 7303 Westbriar Drive, San Antonio, Texas 78227 (“Property”). Plaintiff requested citation be issued for PHH; however, no evidence of service of process is on file as of the date of this Notice of Removal.² As such, this removal is timely pursuant to 28 U.S.C. §1446(b).

DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332

This Court has original jurisdiction over the Action pursuant to 28 U.S.C. §§1332 and 1441 because: (1) there is complete diversity between Plaintiff and PHH; and (2) the amount in controversy exceeds \$75,000 exclusive of interest and costs.

¹ See Original Petition (“Pet.”), Exhibit 2. All of the filings from the Action are attached hereto as Exhibits 1-5. The docket sheet for the Action appears at Exhibit 1.

² See Docket Sheet, Ex. 1.

A. Complete Diversity Exists.

There is complete diversity between Plaintiff and PHH.

1. Plaintiff is a Citizen of Texas.

Plaintiff is an individual domiciled in Bexar County, Texas.³ Therefore, for diversity purposes, Plaintiff is a citizen of Texas.

2. PHH is a Citizen of New Jersey.

PHH, a corporation, is a citizen of New Jersey for purposes of diversity jurisdiction. When considering diversity of citizenship, “a corporation shall be deemed to be a citizen of every State . . . by which it has been incorporated and of the State . . . where it has its principal place of business.” 28 U.S.C. §1332(c)(1). “[T]he phrase ‘principal place of business’ refers to the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010). PHH is incorporated in New Jersey and has its principal place of business in New Jersey. Therefore, PHH is a citizen of New Jersey for diversity purposes. *See Bohannon v. PHH Mortg. Corp.*, 665 F. App’x 760, 761 n. 2 (11th Cir. 2016) (PHH is a citizen of New Jersey).

B. Amount in Controversy Met.

The amount in controversy exceeds \$75,000 exclusive of interest and costs. Plaintiff, among other things, seeks injunctive relief to prevent PHH from foreclosing a lien secured against the Property and taking possession of the Property. “In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation.” *Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333, 97 S. Ct. 2434, 2443, 53 L. Ed. 2d 383 (1977). “[W]hen the validity of a contract or a right to property is called into question in its entirety, the value of the property controls the amount in

³ Pet. at p. 1.

controversy.” *Waller v. Professional Ins. Corp.*, 296 F.2d 545, 547–48 (5th Cir. 1961). A common method of establishing the value of real property is to look to a county appraisal district’s assessment. *Statin v. Deutsche Bank Nat. Trust Co.*, 599 F. App’x 545, 546-47 (5th Cir. 2014). Where “[t]he purpose of the injunctive [or] declaratory relief [is] to stop the foreclosure sale of . . . properties, ‘the amount in controversy . . . is the value of the right to be protected or the extent of the injury to be prevented.’” *Farkas v. GMAC Mortg., LLC*, 737 F.3d 338, 341 (5th Cir. 2013) (quoting *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983)). The Bexar County Appraisal District has set the value of the Property for 2019 at \$93,217.00.⁴ Accordingly, the amount in controversy for the relief sought by Plaintiff in this action exceeds \$75,000 exclusive of interest and costs.

VENUE IS PROPER IN THIS COURT

Venue in this Court is proper under 28 U.S.C. §§ 1441(a) and 1446(a), which provide for removal of any civil action to the federal district court for the district and division embracing the place where the state court action is pending. This Court embraces the 407th Judicial District Court of Bexar County, Texas, which is the state court in which this Action was filed and pending. 28 U.S.C. §§1391 and 1441(a).

ALL PROCEDURAL REQUIREMENTS FOR REMOVAL SATISFIED

Pursuant to 28 U.S.C. §1446(a), true and correct copies of all process, pleadings, orders and docket sheets from the state court file of the Action are being filed with this Notice of Removal.⁵ PHH is filing with the clerk of the state district court in which this Action is pending, and is serving upon Plaintiff, a Notice of Removal, together with Notice of Removal and supporting documentation, pursuant to 28 U.S.C. §1446(d).

⁴ See Bexar County Appraisal District Report, Exhibit 6.

⁵ See Exhibits 1-5.

REMOVAL IS PROPER TO THIS COURT

PHH has met the requirements for removal of this Action to this Court under 28 U.S.C. §§ 1332, 1441 and 1446. This Notice of Removal is filed subject to and without waiver of all rights and defenses of PHH to Plaintiff's claims herein.

Dated: November 15, 2019

Respectfully submitted,

/s/ Amelia H. Marquis

Adam Nunnallee

Texas State Bar No. 24057453

anunnallee@dykema.com

Amelia H. Marquis

Texas State Bar No. 24097512

amarquis@dykema.com

DYKEMA GOSSETT PLLC

1717 Main Street, Suite 4200

Dallas, Texas 75201

(214) 462-6453

(855) 256-1482 FAX

Attorneys for PHH

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all counsel of record on November 15, 2019, in compliance with the Federal Rules of Civil Procedure.

/s/ Amelia H. Marquis

Amelia H. Marquis